

## REMARKS

This Amendment is responsive to the Office Action of June 14, 2007.

Applicant hereby requests an extension of time<sup>1</sup> and is separately submitting the appropriate fee. The Director is authorized to charge any fees which may be required, or credit any overpayment, to Deposit Account Number 01-1960.

Applicant gratefully acknowledges the Examiner's withdrawal of the finality of the prior Office Action. As such, only two minors issues remain.

### **A. Consent of Assignee**

Applicant submitted a copy of the consent of assignee from the parent application, but the Office Action requests a new consent of assignee, citing MPEP 1410.01 which indicates in pertinent part that (emphasis in original):

Where a **continuation** reissue application is filed with a copy of the assignee consent from the parent reissue application, and the parent reissue application is not to be abandoned, the copy of the consent should not be accepted.

In light of this requirement, a newly-signed consent of assignee is attached.

### **B. Reissue Declarations**

In the reissue declaration, the inventors indicate that the "at least one error upon which reissue is based" is as follows:

The claims directed to a "hopper" are too narrow.

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<sup>1</sup> Applicant notes that the Office Action was coded into PAIR as a "restriction requirement" such that the shortened period for reply was set to expire only 1 month from the mailing date. As such, Applicant has paid for a 5-month extension of time. If the Office Action should have been issued with an ordinary 3-month response period, Applicant would be grateful if the Office would refund the difference between a 3-month and a 5-month extension of time to its attorney's deposit account 01-1960.

The Office Action indicates that these reissue declaration is defective because it fails to identify at least one error which is relied upon. The explanation given is that:

Applicant's statement of the error in the claims regarding a hopper being too narrow is insufficient since there are no claims directed to a hopper per se and since it is not seen how the current claims overcome the alleged narrowness of the original hopper limitations.

Applicant respectfully traverses.

As to substance, Applicant seeks an additional reissue patent with new claims that involve, at least in part, the term "hopper."

As to form, the reissue declaration submitted in this case as part of the RCE filed on 10/27/2004 includes a statement of error that is identical in format to the reissue declaration that was already accepted in the parent application filed on 6/3/1999:

	1999 reissue declaration Filed on 6/3/1999 in parent reissue application No. 09/325122  (Issued on January 2, 2001 as RE37008)	2004 reissue declaration Filed on 10/27/2004 in this reissue application No. 09/753171  (pending)
Statement	The claims directed to a "Diverter Gate" are too narrow.	The claims directed to a "hopper" are too narrow.

The Office Action Summary notes that it is responsive to communications filed on "08-31-05" and "09-12-06"<sup>2</sup>. The Summary also notes that claims "1-3, 5-13 and 15-57" are pending. Applicant respectfully notes that the pending claims should be

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<sup>2</sup> The "09-12-06" communication is simply a "fresh" §3.73(b) statement as requested by the Office of Petitions in its September 6, 2006 decision granting Applicant's Rule 47(a) petition.

listed as 38-57. Although it is far from certain, it appears that there may be some confusion as to what claims are pending in light of the unfortunate history of this application (it being lost within the USPTO and reconstructed) and the fact that the 08/31/05 communication is a fax copy of the Rule 47(a) petition that was originally filed by mail on 10/27/04. Further complicating this is the apparent fact that the PTO's PAIR copy of that 8/31/05 fax communication is missing numerous pages due to problems with the incoming fax or subsequent scanning problems.

For the Examiner's convenience, Applicant respectfully notes that the claims pending in this reissue application as of the mailing date of the Office Action were claims 38-57. This can be determined by reviewing the "Substitute Preliminary Amendment" filed on 05-24-2001, as further modified to some degree by the "1<sup>st</sup> Amendment" filed 04-01-2002:

The "Substitute Preliminary Amendment" of 05-24-2001 is listed in PAIR as follows:

05-04-2001	A	<u>Amendment - After Non-Final Rejection</u>	PROSECUTION	1	✓
05-04-2001	SPEC	<u>Specification</u>	PROSECUTION	4	✓
05-04-2001	CLM	<u>Claims</u>	PROSECUTION	14	✓
05-04-2001	REM	<u>Applicant Arguments/Remarks Made in an Amendment</u>	PROSECUTION	1	✓

The "1<sup>st</sup> Amendment" of 04-01-2002 is listed in PAIR as follows:

04-01-2002	A	<u>Amendment - After Non-Final Rejection</u>	PROSECUTION	1	✓
04-01-2002	SPEC	<u>Specification</u>	PROSECUTION	2	✓
04-01-2002	CLM	<u>Claims</u>	PROSECUTION	4	✓
04-01-2002	REM	<u>Applicant Arguments/Remarks Made in an Amendment</u>	PROSECUTION	8	✓
04-01-2002	CLM	<u>Claims</u>	PROSECUTION	7	✓

In this 2<sup>nd</sup> Amendment, Applicant has made a minor amendment to Claim 38 in order to fix a typographic error ("dispending" to "dispensing"), and has added new

Claims 58-63 as an alternative recitation of the invention that is fully supported by the original specification.

Thus, claims 38-63 are now pending.

**E. Summary**

It now appearing that this patent application is ready for issue, Applicant earnestly solicits a notice of allowance so that it can promptly secure a reissue patent containing allowable claims 38-63. Applicant invites the Examiner to call the undersigned attorney if it appears that a phone conference would further this case in any way.

Respectfully submitted,



Dated: December 14, 2007

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